

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS R. BRUNAS,

Defendant-Appellant.

UNPUBLISHED

January 25, 2005

No. 252926

LC No. 00-007841-01

Before: Cavanagh, P.J., and Fitzgerald and Meter, JJ.

FITZGERALD, J. (*dissenting*).

I respectfully dissent.

The trial court clearly articulated defendant's "lack of remorse/cold remorse" as a factor to support a departure from the sentencing guidelines. The law is well settled that a trial court's assessment of a defendant's remorse is not objective and verifiable and cannot constitute a substantial and compelling reason for departure. See, e.g., *People v Daniel*, 462 Mich 1, 7-8; 609 NW2d 557 (2000). Although the trial court articulated additional reasons for the departure, given the significant five-times departure from the guidelines range, I cannot determine whether the trial court would have departed to the same degree absent consideration of defendant's lack of remorse. *People v Claypool*, 470 Mich 715, 727-728; 684 NW2d 278 (2004). I would vacate the sentence imposed and remand for resentencing.

/s/ E. Thomas Fitzgerald